

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15829 of Despa Deutsche Sparkassen-Immobilien-Anlage-Gesellschaft mbH, (former applicant, **607 14th Street Limited Partnership**), pursuant to 11 DCMR 3108.1 and 3107.2 for a special exception under Subsection 774.2 to waive rear yard requirements and a variance from the minimum width of open court requirements for an 11-story addition to a commercial office building in a DD/C-4 District at premises 607 14th Street, N.W. (Square 253, Lots 8 and 61).

HEARING DATE: **June 16, 1993**
DECISION DATE: **June 16, 1993**

DISPOSITION: The Board **GRANTED** the application by a vote of 3-0 (Paula L. Jewell, Maybelle Taylor Bennett and Angel L. Clarens to grant; Carrie L. Thornhill and Sheri M. Pruitt not present, not voting).

FINAL DATE OF ORDER: June 29, 1993

MODIFICATION ORDER

BACKGROUND:

By Order No. 14889 dated December 1, 1988, the Board approved a special exception to waive the rear yard requirements and a variance from the open court width requirements to allow for the restoration and expansion of the historic Westory Building located at 607 14th Street N.W. The building was completed in 1990 and the building is now occupied by office and retail tenants and a restaurant. By Order No. 15829 dated June 29, 1993, the Board approved an addition at 1333 F Street, N.W., the site located immediately adjacent to the historic Westory building. The only parties to the application were the applicant and Advisory Neighborhood Commission 2F. By letter dated October 16, 1998, counsel for the applicant filed a motion for modification of approved plans and requests for a waiver of two of the Board's Rules. The motion for modification will be addressed after the waiver requests.

THE WAIVER REQUESTS:

Pursuant to 11 DCMR 3301.1, the Board may waive its rules where good cause is shown and where the Board determines that granting the waiver will not prejudice the rights of any party.

The applicant is requesting a waiver from Subsection 3335.3 which requires an applicant to file for a modification within six months of the final date of the Board's order. Under the Board's Rules, to be timely this motion should have been filed by December 28, 1993. However, construction of the addition was delayed for a period of time. The applicant stated that there are two major reasons that the approved expansion has not taken place in the years since Board approval

was granted. Most significantly, the applicant stated, there was a sharp downturn in the economy in and around 1993. There was not a market for the space that the approved addition would have created. This economic fact was intensified with regard to the Westory Building due to the timing of the leases for space in that building. In 1993, most tenants of the Westory Building were just a few years into their lease terms. As new tenants, they did not have a need for the space the addition would have allowed and there was little demand for the space in the general market. Therefore, the applicant stated that it was primarily a combination of outside economic forces and lack of demand from the existing tenants in the Westory Building that prevented the original applicant from moving ahead with the addition within the months following the Board's approval and during its period of ownership. The applicant stated that several of the current tenants have expressed a strong interest in immediate expansion into the proposed addition. Also, many of the current tenants will soon be at the end of their lease terms thereby creating an opportunity for the new leases to reflect the addition.

With regard to the request for a waiver under Subsection 3335.3, the Board concludes that given the justification provided by the applicant for not modifying the plans sooner, there is good cause for granting the waiver of the six-month filing requirement. The ANC did not file a statement in opposition to the motion for modification, therefore, the Board concludes that granting the waiver will not prejudice the rights of any party. Therefore, the waiver is hereby granted.

Because the composition of the Board has changed since 1993, counsel for the applicant is seeking a waiver from Subsection 3335.6 of the Zoning Regulations, which states that "No [Board] member shall vote on a request for modification of plans unless the member participated in and voted on the original decision."

With regard to this waiver request Board notes that the record was provided to all of the current members of the Board to allow for them to participate and make an informed decision on the motion. The ANC did not file a statement addressing this waiver request. Therefore, the Board hereby grants the waiver of Subsection 3335.6.

THE MOTION FOR MODIFICATION OF PLANS:

The motion for modification of approved plans must meet the requirements of Section 3335. Specifically, the test for review under Subsection 3335.7 states "Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon in approving the application."

The applicant stated that the proposed modification of plans involves a reduction in the setback from the north wall of the proposed addition to the alley property line. The setback would be reduced from 3.41 feet to 2.85 feet. This alteration will also reduce the court area slightly from 1,262 square feet to 1,231 square feet. The modification also calls for a reduction in size of the penthouse from 5,318 square feet to 3,795 square feet. The modified plans allow for flexibility in regard to: (i) the elimination of the originally proposed office lobby entrance at the ground floor along the F Street frontage and (ii) the location of storefront entrances. Finally, the movant will provide .5 FAR of retail use on the ground floor.

The applicant stated that the modification will enhance the building and the streetscape. The original plans did not include any retail use on the ground floor of the addition. Under the revised plans, the movant will provide .5 FAR of retail use on the ground floor. The movant pointed out that the Office of Planning strongly supports the inclusion of retail use at the street level, and that the movant is willing to provide such use even though, pursuant to Subsection 1700.5, a building addition such as this is not required to contain any retail space. This is because it does not fall within the purview of the Downtown Development District. The applicant pointed out that this change reduces the parking required under Subsection 2101.1 from 87 to 85 spaces and reduces the parking to be provided from 88 to 86 spaces. The applicant maintains that the proposed modifications are *de minimus* and therefore warrant approval by the Board.

Neither Advisory Neighborhood Commission 2F nor the Office of Planning submitted comments on the proposed modification of plans.

Upon consideration of the motion, the lack of opposition, and applicable law, the Board concludes that the modifications are minor and do not change the material facts relied upon by the Board in granting the application.

In light of the foregoing, it is **ORDERED** that the **REQUESTS FOR WAIVER** are **GRANTED** and the **MOTION for MODIFICATION OF APPROVED PLANS** is **APPROVED**, **SUBJECT** to the **CONDITION** that construction shall be in accordance with plans marked as **Exhibit No.30** of the record.

DECISION DATE: November 4, 1998

VOTE: 3-0 (Betty King, Sheila Cross Reid, and Jerry H. Gilreath to grant; John G. Parsons not present, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


SHERI M. PRUITT-WILLIAMS
Interim Director

Final Date of Order: DEC 22 1998

PURSUANT TO D.C. CODE § 1-2531 (1987), SECTION 267 of D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT




BZA APPLICATION NO. 15829

As Interim Director of the Office of Zoning, I hereby certify and attest that on DEC 22 1998 a copy of the order entered on that date in this matter before the Board of Zoning Adjustment was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Allison C. Prince, Esquire
Wilkes, Artis, Hedrick & Lane
1666 K Street, N.W., Suite 1100
Washington, D.C. 20006

Helen M. Kramer, Chairperson
Advisory Neighborhood Commission 2F
1325 13th Street, N.W., #25
Washington, D.C. 20005

Attested By:


SHERI M. PRUITT-WILLIAMS
Interim Director

Date: DEC 22 1998

Att./twr